



STATE OF DELAWARE

PUBLIC SERVICE COMMISSION
861 SILVER LAKE BLVD.
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE:

October 4, 2016

MEMORANDUM

TO: The Chair and Members of the Commission

FROM: Shona Marshall, Public Utility Analyst 

SUBJECT: IN THE MATTER OF THE APPLICATION OF IDT ENERGY NETWORK, LLC (F/K/A EPIQ ENERGY, LLC) FOR A CERTIFICATE TO BROKER ELECTRIC SUPPLY SERVICES WITHIN THE STATE OF DELAWARE (SUBMITTED JUNE 6, 2016; FILED AUGUST 31, 2016) - PSC DOCKET No. 16-0678

Background

On June 6, 2016 IDT Energy Network, LLC (F/K/A Epiq Energy, LLC) (the “Company” or “IDT”) submitted an application (the “Application”) with the Delaware Public Service Commission (the “Commission”) for an Electric Supplier Certificate (“ESC”) to broker electric supply services in the State of Delaware pursuant to §1012 of the Electric Utility Restructuring Act of 1999, 26 *Del. C.* §1001 - §1020 (the “Act”) and 26 *Del. Admin. C.* §3001, the Commission’s Rules for Certification and Regulation of Electric Suppliers (the “Supplier Rules”).¹

Application

The Company’s original filing was submitted on June 6, 2016 but the submitted Application did not meet the minimum filing requirements (MFR’s). In a letter dated June 28, 2016, Commission Staff (“Staff”) requested the Company describe the nature of the services the Company intends to provide in the state of Delaware, file a Certificate of Good Standing (“COGS”) for the state of Maryland and the District of Columbia, submit professional resumes for the Company’s officers, and provide details regarding complaints and investigations against Epiq Energy, LLC and other affiliates of the Company. Follow up documentation received from the Company on July 29, 2016 did not include the COGS for the state of Maryland. The Maryland COGS was submitted through DelaFile on August 10, 2016. In a letter dated August 9, 2016, Staff requested additional information regarding field compliance audits and requested a copy of the Company’s most recent audit report. The Company’s response dated August 31, 2016 provided all of the requested documents. This information satisfies the MFR’s for this Application.

¹ Unless otherwise noted, all references to capitalized terms are set forth in the Act and/or the Supplier Rules.

Review and Analysis

Authority to do Business in Delaware

The Company is a limited liability company formed under the laws of the state of Delaware. The Company provided proof issued by the Delaware Secretary of State that it is legally authorized and qualified to do business in the State of Delaware issued May 26, 2016 .

Resident Agent

The Company supplied the contact information for a Delaware Registered Agent listed in the application Corporation Service Company located at 2711 Centerville Rd, Suite 400, Wilmington, DE 19808.

Compliance with Regional Requirements

The Company affirms in its Application that it will only present electricity supply contracts to its customers from Marketers/Electric Suppliers who are in compliance with all applicable PJM requirements.

Financial, Operational, Managerial and Technical Ability

The Company provided a link to Form 10-K ("Annual Report") of its parent company, Genie Energy, LTD ("Genie") for the period ended December 31, 2015 as indicia of financial capability under Section 2.1.1.5.1 of the Supplier Rules. Staff has reviewed the Annual Report, complete with financial statements and believes that the Annual Report show substantial evidence of the Applicant's ability to broker electric supply services in the State of Delaware.

The Company anticipates serving Residential, Large Commercial, Small Commercial, and Industrial customers for the sale or purchase of electricity throughout the State of Delaware. The Company's application states that it is currently licensed in in the District of Columbia and states of: Illinois, Maryland, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, and Rhode Island as an electric supplier, energy agent, energy consultant, or broker. The Company is also licensed as a supplier, consultant, and aggregator of gas services in the states of Maryland, New Jersey, Ohio, Pennsylvania, and the District of Columbia. The Company also included a listing of affiliates and the licenses they possess to sell and broker electric and gas services in various jurisdictions.

During Staff's review of the Company's practices, Staff discovered investigations into the Company's affiliates related to customer complaints of deceptive sales practices, slamming, and bait and switch schemes performed by representatives of the those companies, dated as recently as June of 2016. Staff requested summaries of these pending investigations, as well as steps taken to rectify the problems alleged. The Company's response dated, July 29, 2016 provided the following information:

In Docket No. M-2013-2314312 the Pennsylvania Public Utility Commission ("PAPUC") launched an informal investigation into allegations of deceptive sales practices and misrepresentation, and slamming by representatives of IDT Energy, Inc. A settlement deal was reached between PAPUC's Bureau of Investigation and Enforcement on 10/17/2013 and a penalty in the amount of \$39,000 was paid by IDT Energy, Inc on 11/17/2013.

In Docket No. C-2014-2427657 the Attorney General of Pennsylvania and the Office of Consumer Advocate filed a formal complaint against IDT Energy, Inc. on behalf of customers enrolled in variable rate plans during the polar vortex of 2014. A settlement was approved by PAPUC on 6/30/2016. The settlement resulted in a payment of \$2.4 million into a refund pool, increased marketing restrictions, and the inability to sell variable rate plan products for a period of 21 months in the state of Pennsylvania.

IDT Energy, Inc was also named as defendant in three putative class action lawsuits alleging unlawful sales and marketing practices in *McLaughlin v. IDT Energy, Inc* Case No. 14-cv-4107 in the U.S District Court of Eastern District of New York, *Ferrare v. IDT Energy, Inc.* Case No: 2:14-cv-04658-AB in the U.S. District Court-Eastern District of Pennsylvania, and *Aks v. IDT energy, Inc.* Docket No. L-04936-14 in Superior Court of New Jersey.

In 2015, Genie, the parent company, retained Wayne Gardner, a former Commissioner at PAPUC as its Compliance Oversight Advisor. He oversees all sales practices, marketing collateral and materials, and compliance activities. In this position, Mr. Gardner reports directly to the Genie's President and COO. A second field compliance auditor has also been added to the staff at Genie. All third party vendor contracts have been amended to allow for announced and unannounced field audits. A team of Sales and Marketing Quality Control Agents monitor third part verifications, research complaints, and conduct random outbound quality assurance calls daily by interviewing samples of sales customers. Genie also requires all independent Sales representatives to adhere to scripts that are provided of Genie for all sales and marketing contacts. Sales and marketing vendors are required to complete a sales and compliance program prior to contracting with the Genie. Each individual Sales representative is also required to sign a Training Affidavit affirming his/her knowledge and understanding of Genie's sales and compliance policies and state policies, rules and regulations. The Company provided further information detailing the roles of the Field Compliance Auditors as well the audits themselves. The Company also provided details of offenses and behavior prohibited by Genie and the actions taken to remedy such actions. In a letter dated August 9, 2016, Staff asked about specific issues uncovered in the last twelve months by Field Compliance Auditors, corrective action taken, if any, and if a recent report could be provided for Staff's review. The Company did clarify that IDT Energy Network, LLC, the Applicant, does not contract with marketing vendors that have teams of Sales representatives and would not require auditing. The Company stated there were 121 vendor audits conducted over the course of the last twelve months, covering 282 agents. Corrective action was taken in direct correlation to the offense uncovered. The Company also provided an audit report for Staff's review.

The Application included a summary of key operating personnel of the Company. Michael Stein is the Chief Executive Officer ("CEO") of Genie Retail Energy, Inc. Mr. Stein has two years of experience in the energy industry and four years of management experience. He served as Vice President and Senior Vice President of Business Development at IDT Telecom, Inc. from January of 2012 through December of 2014. He also serves as Senior Vice President and Executive Vice President of Genie Energy, Ltd. He has held this position since January 2014 and continues to hold this position in addition to his current position as CEO. Alan Schwab is the President and Chief Operating Officer ("COO") of Genie Retail Energy, Inc. Mr. Schwab possesses six years of experience in the energy industry and twenty years of managerial experience. Mr. Schwab began his career at IDT Telecom, Inc as the Manager of Operations in January of 1996. He ended his term at the company in the position of Senior Vice President of Operations in January of 2004. From January of 2004 through June of 2008, Mr. Schwab was employed as the COO of IDT Capital. In June 2008, Mr. Schwab began working for IDT Corporation, Inc. as an Operations Consultant. He held this position until October 2010. Mr. Schwab began working for IDT Energy, Inc. as the COO in October 2010. He held this position until March 2015. Avi Goldin is the Chief Financial Officer ("CFO") and Treasurer of Genie Energy, Ltd. He has five years of experience in the energy industry and over twelve years of managerial experience. Mr. Goldin held the position of Director of Strategic Planning at Net2Phone Cable Telephony from January 2004 until August 2006 when the company transitioned to IDT Corporation. Under IDT Corporation, Mr. Goldin held the position of Director of Corporate Development from September 2006 through December of 2007. From December 2007 through January 2009, Mr. Goldin held the position of Vice President of Finance and Corporate Development at CayComm Media Holdings. In May 2009, he served as Vice President of Corporate Development at IDT Corporation. He held this position until August of 2011 before transitioning to his current position of CFO and Treasurer at Genie Energy Ltd.

Surety Bond

The Company did not post a surety bond because it is a Broker only and there are no service agreements between the Company and any Delaware Electric Distribution Company. The Company will not collect any fees or deposits from any of its customers for any of its brokerage services.

Verification of Application

The original Application contained a signed sworn verification of application with the signature of Michael Stein, CEO of IDT Energy Network, LLC. Subsequent filings to the Application have been verified by Alan Schwab, President and COO.

Consent to Jurisdiction

The Company consents to the jurisdiction of the Delaware courts.

Contracts

The Company also did not provide any sample contracts for Residential, Commercial, or Industrial Customers as it is a Broker only and does not and will not have contracts with Retail Electric Customers to provide Electric Supply Service.

Statement of Criminal Activity

The Applicant stated that they have not been charged or convicted of any criminal activity nor have any of its principals or corporation offices. An internet review of the Company and its principals did not return any incidents of criminal activity.

Legal Review

Staff submitted this Memo for review by the Attorney on October 5, 2016.

Staff Recommendation

Based on Staff's review and analysis of the Application, the Company has satisfied the requirements of the Act and the Supplier Rules. The Company resolved all outstanding issues with Staff and the completed Application supports the Company's request for certification. The Company has assuaged Staff's operational concerns and been accommodating in response to Staff's inquiries. Genie Retail Energy, Inc. stated that it is determined to ensure that the sales and marketing practices of its supplier and broker subsidiaries, in Delaware and in the other jurisdictions in which they operate, will be compliant with all applicable statutes and regulations at the federal, state, and local levels². Staff's review and analysis of the Application submitted by the Company demonstrates substantial evidence of capability to render service based on the Company's financial, operational, managerial and technical abilities. Therefore, Staff recommends the Commission approve the Application.

² IDT Energy Network DE Broker Application Response to Deficiency letter 7-29-16